IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 588 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge?

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KANUBHAI SHAMAJIBHAI DAYANI & 1 - Applicant(s)
Versus
STATE OF GUJARAT & 4 - Respondent(s)

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Appearance :
MR GM JOSHI for Applicant(s) : 1 - 2.
MR RC KODEKAR, ADDL. PUBLIC PROSECUTOR for Respondent(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 2 - 3.
M/S THAKKAR ASSOC. for Respondent(s) : 4 - 5.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 25/07/2007

ORAL JUDGMENT

1. By way of this petition under Article 226 of the Constitution of India, the petitioners – original complainant have prayed for an appropriate Writ,

direction and order directing the respondents to take immediate action on the complaint of the petitioners and proceed in accordance with the provisions of Criminal Procedure Code for registering the offence as well as making arrest of the culprits.

2. It is the contention on behalf of the respective petitioners that one Vanmalibhai Tribhuvanbhai was the owner of a parcel of land bearing Final Plot No. 116 of Katargam Town Planning scheme No. 49, who died on 13.12.2000. That Vanmlibhai was survived by his widow Savitaben and Son Champakbhai. Champakbhai released his rights from the land in question on 10.01.2003. However, Mamlatdar Surat City ordered regarding Savitaben and Champakbhai are to be continued as legal heirs of late Champakbhai on 21.04.2003. It was after the registered sale deed dated 30.01.2003, Champakbhai executed power of attorney in favour of his mother Savitaben. The said Satvitaben executed a registered Sale Deed dated 30.01.2003 in favour of Shantibhai Dhanani & Batukbhai Dudhat and the same is registered with the Sub- Registrar at Katargam, Surat. That the petitioners purchased the said parcel of the land by

Registered Sale Deed dated 30.09.2004 from Shantibhai Virjibhai Dhanani and Batukbhai Nanjibhai Dudhat. That one person Madhubhai Virjibhai Patel has by registered Sale Deed dated 23.04.2003 and 29.04.2003 sold the same land bearing Final Plot No. 116 of Katargam Town Planning Scheme No. 49 to his wife and children on the basis of alleged power of attorney of Savitaben and Champakbhai. That one Madhubhai Patel in collusion with his own family members and in connivance with the Government Officers executed the Sale Deed as alleged power of holder, in spite of the fact that the original land owner Savitaben had already sold the same land to Shantibhai and Batukbhai much prior to the date of said alleged transaction. That Civil Suit came to be filed in the Court of Civil Judge (S.D.), Surat bearing No. 385 of 2003 against Savitaben, Champakbhai, Batukbhai and Shantibhai Virjibhai by Madhubhai's Wife Vimlaben, Son Yogesh and others for declaration and permanent injunction claiming that the said defendants have no right to create any kind of obstruction in their alleged possession. It is the case on behalf of the petitioners that said persons filed second Civil Suit

bearing No. 355/2004 against the Surat Municipality, Surat Urban Development Authority, Town Planning Authority, Batukbhai and Shantiben. That Madhubhai Virjibhai filed Special Civil Suit bearing No. 320 of 2005 against Batukbhai, Shantibhai, petitioners and Champakbhai and prayed for temporary injunction, which was subsequently vacated. That Madhubhai moved matter further by preferring Appeal From Order being A.O. No. 149 of 2006 which is pending for admission before this Court and this Court has passed an order directing to maintain status quo as to the condition of the land. It appears that some proceedings came to be initiated before the Revenue Authorities with regard to the Entry in the Revenue records, which reference is made in the petition. It is the case on behalf of the petitioner that respondent No.4 herein – Madhubhai Virjibhai Dhanani, has committed an offence punishable under Sections 120B, 192, 196, 209, 420, 467, 468, 469, 471 of the Indian Penal Code in view of the fact that as on date of the alleged Sale Deed the land was an agricultural land and it cannot be sold in parts as the same would straightway violate the provisions of Prevention of Fragmentation

of Agricultural Lands Act; the requisite permissions were undisputedly not obtained by Madhubhai prior to the Sale Deed and the same would therefore, render the agreements as void and non-est; even then it is sold to his wife and children by creating small parcels of land in violation of Fragmentation Act that is an obvious attempt to create rights on the basis of a Sale Deed that are executed by the vendor as power of attorney. It is the case on behalf of the petitioners that the petitioners being purchaser for consideration of valid sale deed came to know about such fraudulent and illegal transaction, therefore, filed complainants before the police authorities i.e. Director general and Inspector general of Police and secretary, Home department pointing out that in spite of the petitioners making out a clear case of criminal offence in respect of property and filing complaint on 26.12.2006, no actions are taken by the police authorities so far and even the complaint filed by the petitioners is not registered as FIR by the concerned police officers and even Director general and Inspector general of Police and secretary, Home department,

have not taken any action, therefore, the petitioners have preferred the present petition under article 226 of the Constitution of India for the aforesaid reliefs, more particularly, directing respondent Nos. 1,2 and 3 and the Police Officer of the concerned Police Station and/or Director general and Inspector general of Police to register the complaint submitted by them as FIR and further investigate the same under the provisions of Criminal Procedure Code.

3. Mr. G.M.Joshi, learned Advocate appearing on behalf of the petitioners has heavily relied upon the decision of the Hon'ble Supreme Court in the case of ***Prakash Singh Badal and Anr. v/s. State of Punjab and Ors.*** reported in *(2007) 1 SCC 1*, more particularly, paragraph Nos. 63 to 72 of the said judgment. He has also relied upon the decision of the Hon'ble Supreme Court in the case of ***Lallan Chaudhary & ors. V/s. State of Bihar & Anr.*** reported in *2006 AIR SCW 5172* in support of his submission that when any information is given to the concerned Police Officer informing cognizable offence, the concerned Police Officer is duty bound to register the case on receiving such information as required under Section

154 of the Criminal Procedure Code. It is also further submitted and as held by the Hon'ble Supreme Court in the case of *Prakash Singh Badal (supra)*, when any information is furnished to the concerned Police officer with regard to cognizable offence, he is duty bound to record the same as FIR and the concerned Police Officer cannot embark upon an enquiry as to whether the information laid by the informant is reliable and genuine and refuse to register a case on the ground that the information is not relevant or credible. The Officer is statutorily obliged to register a case. Therefore, it is requested to allow the present application and direct the concerned Police Officer to register the complaint as FIR and further investigate the case as per the Criminal Procedure Code.

4. On the other hand, Mr.P.M.Thakkar, learned Senior Advocate appearing on behalf of the respondent No.4 who was joined as party respondent pursuant to the order passed by this Court as well as Mr.R.C.Kodekar,learned Additional Public Prosecutor, have jointly submitted that in the facts and circumstance of the case more particularly complex

questions and the disputed question of facts more particularly with regard to land and that so many civil litigations are pending, present petition is not required to be entertained. It is submitted by Shri Thakkar, learned Senior Advocate that even in the case of *Prakash Singh Badal (supra)*, the Hon'ble Supreme Court of India has never said that whenever the concerned Police Officer is not registering the complaint as FIR, remedy is under Article 226 of the Constitution of India to direct the concerned Police officer to register the complaint as FIR. It is submitted by him that even in paragraph No. 73 of the said decision, the Hon'ble Supreme Court of India, has specifically clarified that obligation to register the case is not to be confused with the remedy if the same is not registered. He has submitted that as held by Hon'ble Supreme Court in the case of ***Gangadhar Janardan Mhatre V/s. State of Maharashtra and Ors.*** reported in *(2004) 7 SCC 768*, remedy available to the petitioners is to file private complaint before the concerned Magistrate under Section 190 of the Criminal Procedure Code. Shri Thakkar, learned Senior Advocate has also relied

upon the recent decision of the Hon'ble Supreme Court in the case of ***Aleque Padamsee and Ors. V/s. Union of India and ors.*** rendered in *Writ Petition (Cri.) 11-15 of 2003 dated 18.07.2007*, whereby the Hon'ble Supreme Court has directed the concerned complainant to file appropriate complaint before the concerned Magistrate under Section 190 of the Criminal Procedure Code read with Section 200 of the Criminal Procedure Code. It is submitted that in that case grievance was made that police authorities have refused to register the complaint as FIR. Therefore, it is requested to dismiss the present application and relegate the petitioners to file private complaint under section 190 read with section 200 of the Criminal Procedure Code.

5. Heard the learned advocates appearing on behalf of the respective parties.

6. At the outset it is required to be noted that the dispute is with regard to the land and there are so many civil litigations which are pending before the competent Civil Court. The grievance which is voiced in the present petition is that though the

petitioners have approached the Police officers of the concerned police stations as well as Director General and Inspector General of Police by way of complaint against respondent Nos. 4 and 5 for the offence punishable under Sections 120B, 192, 196, 209, 420, 467, 468, 469, 471 of the Indian Penal Code and the same is not registered as FIR and the same is not further investigated. Therefore, it is prayed for an appropriate Writ, direction and order directing the concerned Police Officers and Director General and Inspector General of Police to register the complaint submitted by the petitioners as FIR and further investigate the same.

7. Mr. Joshi, learned Advocate has heavily relied upon the decision of the Hon'ble Supreme Court in the case of **Prakash Singh Badal & Anr. V/s. State of Punjab & Ors.** reported in *(2007) 1 SCC 1* and in the case of ***Lallan Chaudhary & Ors. V/s. State of Bihar & Anr.*** reported in *2006 AIR SCW 5172*. Now so far as the reliance placed upon the decision of the Hon'ble Supreme Court in the case of *Prakash Singh Badal (supra)*, is concerned, on considering the said

decision as a whole, the Hon'ble Supreme Court has considered Section 154 of the Criminal Procedure Code and other provisions of the Criminal Procedure Code and has held that when any information with regard to cognizable offence is received by the concerned Police Officer it is the duty of the concerned Police Officer to register the same as FIR and investigate the case and at that stage before registering the FIR it is not open for the concerned Investigating Officer to embark upon an enquiry as to whether the information laid by the informant is reliable and genuine and it is not open for the concerned Investigating Officer to refuse to register a case on the ground that the information is not reliable or credible. The Officer is statutorily obliged to register a case. If the concerned Police Officer refuses to register the complaint as FIR what is the remedy available is concerned, in paragraph No. 73 of the said decision the Hon'ble Supreme Court has observed as under : “At this stage it needs to be clarified that the obligation to register a case is not be confused with the remedy if the same is not registered. Issue of remedy has been decided by this

Court in several cases". *(see Gangadhar Janardhan Mhatre V/s. State of Maharashtra & Ors.*)" In recent decision the Hon'ble Supreme Court in the case of *Aleque Padamsee and Ors. (supra),* considered the remedy available when the concerned Police Officer refuses to register the complaint as FIR and after considering various provisions of Criminal Procedure Code inclusive of Section 154, 156 and 190 of the Criminal Procedure Code, the Hon'ble Supreme Court in Paragraphs 5,6 and 7 has observed after considering various decisions of the Hon'ble Supreme Court on the point as under:

> *"5. When the information is laid with the police, but no action in that behalf is taken, the complainant can under Section 190 read with Section 200 of the Code lay the complaint before the Magistrate having jurisdiction to take cognizance of the offence and the Magistrate is required to enquire into the complaint as provided in Chapter XV of the Code. In case the Magistrate, after recording evidence, finds a prima facie case, instead of issuing process to the accused, he is empowered to direct the police concerned to investigate into offence under Chapter XII of the Code*

and to submit a report. If he finds that the complaint does not disclose any offence to take further action, he is empowered to dismiss the complaint under Section 203 of the Code. In case he finds that the complaint / evidence recorded prima facie discloses an offence, he is empowered to take cognizace of the offence and could issue process to the accused. These aspects have been highlighted by this Court in All Indian Institute of Medical Sciences Employees' Union (Reg) through its President v/s. Union of India and Ors. [(1996) 11 SCC 582]. It was specifically observed that a writ petition in such cases is not to be entertained.

6. The above position was again highlighted in Gangadhar Janardan Mhatre v/s. State of Maharashtra [(2004) 7 SCC 768], Minu Kumari and Another V/s. State of Bihar and Ors. [(2006) 4 SCC 359] and Hari Singh V/s. State of U.P. [2006(5) SCC 733].

7. Whenever any information is received by the police about the alleged commission of offence which is a cognizable one there is a duty to register the FIR. There can be no dispute on that score. The only question is whether a writ can be issued to the police authorities to register the same. The basic

question is as to what course is to be adopted if the police does not do it. As was held in All India Institute of Medical Science's Case (supra) and re-iterated in Gangadhar's case (supra) the remedy available is as set out above by filing a complaint before the Magistrate. Though it was faintly suggested that there was conflict in the views in All India Institute of Medical Sciences's Case (supra), Gangadhar's case (supra), Hari Singh's case(supra), Minu Kumari's case (supra) and Ramesh Kumari's case (supra), we find that the view expressed in Ramesh Kumari's case(supra) related to the action required to be taken by the police when any cognizable offence is brought to its notice. In Ramesh Kumari's case(supra) the basic issue did not relate to the methodology to be adopted which was expressly dealt with in All India Institute of Medical Sciences's Case (supra), Gangadhar's case (supra), Minu Kumari's case (supra) and Hari Singh's case (supra). The view expressed in Ramesh Kumari's case (supra) was re-iterated in Lallan Chaudhary and Ors. V/s. State of Bihar (AIR 2006 SC 3376). The course available, when the police does not carry out the statutory requirements under Section 154 was directly in issue in All India Institute of Medical Sciences's case

(supra), Gangadhar's case (supra), Hari Singh's case(supra) and Minu Kumari's case(supra). The correct position in law, therefore, is that the police officials ought to register the FIR whenever facts brought to its notice show that cognizable offence has been made out. In case the police officials fail to do so, the modalities to be adopted are as set out in Sections 190 read with Section 200 of the Code. It appears that in the present case initially the case was tagged by order dated 24.02.2003 with WP(C) 530/2002 and WP(C) 221/2002. Subsequently, these writ petitions were de-linked from the aforesaid writ petitions."

Ultimately, the Hon'ble Supreme Court in the said decision issued following directions (para 8) as under :

"8. The writ petitions are finally disposed of with the following directions :

(1) xxx—xxx

(2) It is open to any person aggrieved by the inaction of the police officials to adopt the remedy in terms of the aforesaid provisions.

(3) So far as non-grant of sanction aspect

is concerned, it is for the concerned government to deal with the prayer. The concerned government do well to deal with the matter within three months from the date of receipt of this order."

8. Now considering the decision of the Hon'ble Supreme Court in the case of *Aleque Padamsee and Ors. (supra)* and other decisions referred to and considered by the Hon'ble Supreme Court in the said decision, considering the facts and circumstance of the case and the complex questions, the petitioners are to be relegated to file appropriate complaint before the concerned Magistrate under Section 190 of the Criminal Procedure Code and the prayer of the petitioners to direct the concerned Police Officer and the Director General and Inspector General of Police to register the complaint as FIR, in exercise of powers under Article 226 of the Constitution of India, is not required to be granted.

9. For the reasons stated above, the petition fails. Notice discharged. The petitioners are relegated to submit appropriate private complaint before the concerned Magistrate under Section 190 of

the Criminal Procedure Code, the same shall be considered in accordance with law and on merits after following due procedure under Criminal Procedure Code. It is however made clear that this Court has not expressed any opinion on merits of the case.

[M.R.Shah, J.]

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